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UNCLAS SECTION 01 OF 02 GUATEMALA 001084

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SUBJECT: APPEAL OF 2002 MACK CASE SENTENCE

REF: 02 GUATEMALA 2605

1. (U) Summary: On April 23, the Fourth Court of Appeals heard the public arguments from both the defense and the prosecution for the appeal of the Third Sentencing Court's October 3, 2002 decision in the Myrna Mack murder case, in which retired Colonel Juan Valencia Osorio was convicted and sentenced to 30 years in prison, while retired General Edgar Godoy Gaitan and retired Colonel Juan Oliva Carrera were acquitted. The tribunal listened to five hours of oral arguments in a courtroom packed with press and interested observers, including the Ambassador, and then told the public they would announce their decision on May 7. End Summary.

Mack Team's Arguments

2. (U) The public prosecutor Mynor Melgar and private lawyer for the Mack Foundation Roberto Romero stated that, throughout the course of the September 2002 trial, the prosecution proved that Myrna Mack's murder was a political crime, that Mack was the object of surveillance before her murder, and that the convicted material author, Noel de Jesus Beteta, was ordered by his superiors in the Presidential Military Staff (EMP) to surveil and eliminate Mack. Melgar and Romero both asked the court to confirm the sentence against Valencia Osorio and to apply the conviction and prison sentence to Oliva Carrera and Godoy Gaitan because of their positions above and below Valencia Osorio in the EMP's chain of command.

The Defense's Arguments

3. (U) Valencia Osorio's new legal representation, Francisco Flores, spent over 90 minutes arguing his appeal before the judges, who ultimately requested that he make his comments more concise. Flores questioned the admissibility of the evidence in the case, especially the testimony of former inmate Jorge Lemus (aka "El Buki") and the tapes he made of cellmate Beteta claiming that Valencia Osorio ordered the murder. Flores also questioned the court's decision to lay all the blame on Valencia Osorio for what was considered a political crime, since he was not singularly responsible for designing the GOG's counterinsurgency policy during the internal conflict. Flores argued that the Third Sentencing Court made an erroneous application of the law, that convictions of this gravity must be based on stronger evidence, and that his client should be released. Lawyers for Godoy Gaitan and Oliva Carrera asked the tribunal to confirm the Third Court's decision finding their clients innocent.

Helen Mack, Juan Valencia Osorio, and Edgar Godoy Gaitan

4. (U) Helen Mack asked the tribunal (who also presided in the Gerardi appeal and decided to annul the Third Sentencing Court's 2001 conviction, which was subsequently confirmed by the Supreme Court) to act with integrity and independence. Mack reminded them that she has worked for justice in this case for thirteen years, and that the Inter-American Court also requested that Guatemala take this case seriously, after years of frivolous dilatory tactics by the defense. Mack asked that the tribunal confirm the sentence against Valencia Osorio and to give Oliva Carrera and Godoy Gaitan equal punishments because she proved that all three were co-authors of the crime.

5. (U) Valencia Osorio argued that he was innocent and that Beteta blatantly lied. Valencia Osorio said that direct communication between a Major (Valencia Osorio's rank in 1990) and a Sergeant (Beteta's rank in 1990) was inconceivable and that this proved he did not order Beteta to murder Mack. Godoy Gaitan asked that the tribunal confirm the Third Court's decision because he, too, was innocent and had been suffering through the harsh conditions and various bloody riots in Guatemalan prisons over the past seven months.

Public Presence

6. (U) The President of the Court said that they would release their decision in another public audience at noon on May 7. After the proceedings, the Ambassador was swarmed by the press, who noted that the USG has consistently placed a

high priority on justice for human rights crimes in Guatemala. The Ambassador told the press that this case is important for justice in Guatemala and that his presence was intended to convey moral support for the participants in the judicial process, especially judges and others who had come under threat.

Comment

[17](#). (U) We will continue to monitor the case closely and show public support for the judicial process.
HAMILTON